



Paper No. 35

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In re Application of:  
Mitsuhiro Aida  
Application No. 08/813,247  
Filed: March 7, 1997

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SPECIAL PROGRAMS OFFICE  
ON PETITION  
DIRECTOR PATENTS

This is a decision on the petition under 37 C.F.R. §1.137(b), filed June 2, 2000, to revive the above-identified application.

This application became abandoned for failure to timely reply to the final office action mailed October 13, 1999. A shortened statutory period of three (3) months was set for replying. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. The shortened statutory period lapsed without a timely and proper reply. Consequently, the application became abandoned on January 14, 2000. 35 U.S.C. §133, 37 C.F.R. §1.134-136.

The petition under 37 CFR 1.137(b) to revive the above-identified application is **GRANTED**.

Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b). A grantable petition pursuant to 37 C.F.R. §1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 C.F.R. §1.17(m);
- (3) a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional". The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c).

As to Item (3), the statement of unintentional delay presented in the petition does not

comply with the current rule. Effective December 1, 1997, 37 C.F.R. §1.137(b)(3) requires a statement that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional" be submitted. However, the statement presented will be accepted and construed as meaning that "the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional." If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

Because the March 22, 2000 Petition for Extension of Time was insufficient,<sup>1</sup> and consequently petitioner's CPA was not considered, petitioner may request a refund of this extension of time fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's written request.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Nelson B. Snyder III in the Office of Petitions at (703) 305-0011.



Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>1</sup>Although the Petition for Extension of Time was timely filed, any *extension* of time to include the period March 13, 2000 through April 13, 2000 (the hypothetical sixth month to respond) would *also* have to include the period January 13, 2000 through March 13, 2000 (the hypothetical fourth and fifth months).